

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CYNTHIA M. ERICKSON,

Plaintiff,

v.

**EPA R1 WALTER BERNG, EPA R2
MARC GREENBURG, DOUG PABST,
GEORGE ZAEHES, ENJ DEP GARY
BUCHANEN, and DAN MILLEMAN,**

Defendants.

Civ. No. 19-12918 (KM) (MAH)

OPINION

KEVIN MCNULTY, U.S.D.J.:

The plaintiff, Cynthia Erickson, filed this action against “EPA R1” Walter Berng, “EPA R2” Marc Greenburg, Doug Pabst, George Zaehe, the New Jersey Department of Environmental Protection, Gary Buchanan, and Dan Milleman. (Compl.)¹ For the reasons explained below, the Complaint in this matter (DE 1) will be dismissed on *in forma pauperis* (“IFP”) screening for failure to state a claim, without prejudice.

I. Summary

Erickson filed the Complaint on May 24, 2019. (DE 1.) On June 11, 2019, the Court granted Erickson’s application to proceed IFP without payment of fees under 28 U.S.C. § 1915. (DE 2.) Summonses were issued as to all defendants on the same date. (DE 4.) On June 24, 2019, the Court stayed the

¹ Citations to the record will be abbreviated as follows. Citations to page numbers refer to the page numbers assigned through the Electronic Court Filing system, unless otherwise indicated:

“DE” = Docket entry number in this case.

“Compl.” = Complaint

service of summons pending an initial screening under 28 U.S.C. § 1915A. (DE 4.)

II. Discussion

Because the Court has granted IFP status, I am obligated to screen the allegations of the Complaint to determine whether it

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

[T]he provisions of § 1915(e) apply to all in forma pauperis complaints, not simply those filed by prisoners. *See, e.g., Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 n. 19 (3d Cir. 2002) (non-prisoner indigent plaintiffs are “clearly within the scope of § 1915(e)(2)”). *See also Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.2000)(§ 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners).

Atamian v. Burns, 236 F. App'x 753, 755 (3d Cir. 2007). *See also Johnson v. Rihanna*, No. CV 18-448, 2018 WL 3244630, at *1 (W.D. Pa. June 13, 2018), *report and recommendation adopted*, 2018 WL 3239819 (W.D. Pa. July 2, 2018).

This Complaint fails to state an intelligible claim. It cites no case, statute, or regulation on which it is based. Erickson seems to allege that the Complaint raises a federal question because she sues federal defendants, presumably employees of the Environmental Protection Agency. However, her handwritten factual allegations are very difficult to interpret. I have given this pro se plaintiff's pleadings a liberal construction. Even so, this Complaint does not set forth a short and plain statement of this Court's jurisdiction or of facts setting forth a cognizable federal cause of action against the defendants. *See Fed. R. Civ. P. 8(a)*.

First, the Complaint includes no reference to any federal law that defendants conduct allegedly violated. To the extent a liberal reading of Erickson's Complaint alleges an Administrative Procedure Act claim against a

federal agency, it does allege how any of the actions here are “arbitrary, capricious, . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). To the extent some of the defendants may be state employees and the Complaint attempts a 42 U.S.C. § 1983 claim, Erickson must allege (1) the deprivation of a federal right, and (2) state action. *Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). She has not identified a federal right, and I can infer none. It is not even clear that the defendants are state actors.

III. Conclusion

For the reasons stated above, the complaint is DISMISSED without prejudice upon initial screening pursuant to 28 U.S.C. § 1915(e). An appropriate order accompanies this opinion.

Dated: January 13, 2021

/s/ Kevin McNulty

Kevin McNulty
United States District Judge